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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/890,490	07/09/97	ANTHONY FENN	R F3141(V)

PATENT DEPARTMENT
UNILEVER UNITED STATES INC
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A3M1/1216

EXAMINER	
NESSLER, C	
ART UNIT	PAPER NUMBER
1302	3

DATE MAILED: 12/16/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 7/9/97
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.
- A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-10 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☒ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

U.S. GPO: 1998-404-498/40517

Serial Number: 08/890490

Art Unit: 1302

The abstract of the disclosure is objected to because the abbreviation "AFP" should be replaced by the full terminology. Correction is required. See MPEP § 608.01(b).

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 5, and 7, the recitation "AFP('s)" should be replaced by the full terminology. In claim 8, the recitation "discrete elements of a confectionary product of claim 5" is considered to be vague and indefinite, since it is not clear which discrete elements are meant. Since the claim appears to recite that some but not all of the elements of the product of claim 5 are present, the claim reads on a frozen confection that does not contain antifreeze peptides. Similarly, the ice cream mix recited in claim 10 need not include the antifreeze peptides, since the ice cream mix "suitable for use in the preparation" of the frozen confectionary product of claim 5 may only include a conventional ice cream mix base to which the antifreeze peptides may later be added.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1302

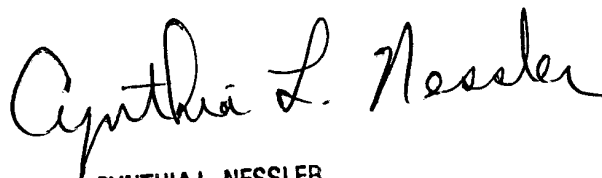
Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Clemmings et al, Fletcher et al, or Warren et al, each in view of applicants' admission.

Either Clemmings et al, Fletcher et al, or Warren et al disclose the use of antifreeze peptides in frozen confectionary products and mixes such as ice cream. The claims differ in the recitation of the aspect ratio. As admitted by the applicants in the first paragraph of page 2 of the specification, antifreeze peptides are known for their ability to influence the shape of ice crystals (according to WO 92/22581, a copy of which is requested). The aspect ratio is considered to be a result effective variable, dependent upon, for example, the shape of the ice crystals formed. It would have been obvious to utilize the antifreeze peptides of either Clemmings et al, Fletcher et al, or Warren et al, in the frozen confectionary products of each of the primary references, to influence the shape of the ice crystals formed in order to provide a desired aspect ratio.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia L. Nessler whose telephone number is (703) 308-3843.

cn

December 14, 1997



CYNTHIA L. NESSLER
PRIMARY EXAMINER
GROUP 1300